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17 **UNITED STATES DISTRICT COURT**
 18 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

19 JOHN SMITH, individually and as
 20 a representative of the Class,

21 Plaintiff,

22 v.

23 A-CHECK AMERICA INC. d/b/a
 24 A-CHECK GLOBAL,

25 Defendant.

CLASS ACTION

Case No.:5:16-cv-00174-VAP-KK

**JOINT STIPULATED
 PROTECTIVE ORDER**

Judge: Hon. Virginia A. Phillips

Magistrate Judge:
 Hon. Kenly Kiya Kato

Complaint Filed: December 3, 2015
 Trial Date: None set

NOTE CHANGES MADE BY THE COURT

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A-CHECK AMERICAN INC. d/b/a
A-CHECK GLOBAL

1 **1. A. PURPOSES AND LIMITATIONS**

2 Discovery in this action is likely to involve production of confidential,
3 proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation
5 may be warranted. Accordingly, the parties hereby stipulate to and petition
6 the Court to enter the following Stipulated Protective Order. The parties
7 acknowledge that this Order does not confer blanket protections on all
8 disclosures or responses to discovery and that the protection it affords from
9 public disclosure and use extends only to the limited information or items
10 that are entitled to confidential treatment under the applicable legal
11 principles. The parties further acknowledge, as set forth in Section 12.3,
12 below, that this Stipulated Protective Order does not entitle them to file
13 confidential information under seal; Civil Local Rule 79-5 sets forth the
14 procedures that must be followed and the standards that will be applied when
15 a party seeks permission from the court to file material under seal.

16 **B. GOOD CAUSE STATEMENT**

17 This action is likely to involve the identification of confidential
18 information for which special protection from public disclosure and from use
19 for any purpose other than prosecution of this action is warranted. Protected
20 Material warranting protection from this Protective Order includes all
21 information and documents produced by a party or third parties in response
22 to written discovery requests, a subpoena, or otherwise that refer to, reflect
23 upon, or relate to:

24 1.1 Background reports and other information about individuals
25 other than Plaintiff;

26 1.2 Documents relating to the conduct of a party's business of a
27 sensitive, confidential, and/or proprietary nature, including, but not limited
28 to, trade secrets; data, codes, programs, methods, processes, and procedures

1 in connection with the development and providing of a party's products and
2 services; a party's agreements with customers, suppliers, vendors and other
3 third parties; a party's financial information; information relating to a party's
4 business plans and strategies; information concerning a party's present or
5 former clients; information about a party's policies, practices, or standard
6 operating procedures; information about a party's administrative and
7 regulatory agency proceedings, lawsuits, or other legal proceedings; and
8 information received from customers, suppliers, vendors and other third
9 parties with whom a party does business; or

10 1.3 Any other commercially sensitive information and documents
11 that are not readily available to the public through legitimate origins or
12 testimony that are in good faith designated as "Confidential."

13 Accordingly, to expedite the flow of information, to facilitate the
14 prompt resolution of disputes over confidentiality of discovery materials, to
15 adequately protect information the parties are entitled to keep confidential, to
16 ensure that the parties are permitted reasonable necessary uses of such
17 material in preparation for and in the conduct of trial, to address their
18 handling at the end of the litigation, and serve the ends of justice, a protective
19 order for such information is justified in this matter. It is the intent of the
20 parties that information will not be designated as confidential for tactical
21 reasons and that nothing be so designated without a good faith belief that it
22 has been maintained in a confidential, non-public manner, and there is good
23 cause why it should not be part of the public record of this case.

24 **2. DEFINITIONS**

25 2.1 Action: This pending federal law suit.

26 2.2 Challenging Party: a Party or Non-Party that challenges the
27 designation of information or items under this Order.
28

1 2.3 “CONFIDENTIAL” Information or Items: information
2 (regardless of how it is generated, stored or maintained) or tangible things
3 that qualify for protection under Federal Rule of Civil Procedure 26(c), and
4 as specified above in the Good Cause Statement. The restrictions contained
5 herein regarding disclosure of CONFIDENTIAL Information also applies
6 with equal force to any excerpts, analyses, or summaries of such materials or
7 the information contained therein, as well as to any pleadings, memoranda,
8 briefs, exhibits, transcripts, or other documents that may be prepared in
9 connection with this action that contain or refer to CONFIDENTIAL
10 Information contained therein.

11 2.4 Counsel: Outside Counsel of Record and In-House Counsel (as
12 well as their support staff).

13 2.5 Designating Party: a Party or Non-Party that designates
14 information or items that it produces in disclosures or in responses to
15 discovery as “CONFIDENTIAL.”

16 2.6 Discovery Material: all items or information, regardless of the
17 medium or manner in which it is generated, stored, or maintained (including,
18 among other things, testimony, transcripts, and tangible things), that are
19 produced or generated in disclosures or responses to discovery in this matter.

20 2.7 Expert: a person with specialized knowledge or experience in a
21 matter pertinent to the litigation who has been retained by a Party or its
22 counsel to serve as an expert witness or as a consultant in this Action.

23 2.8 In-House Counsel: attorneys who are employees of a party to
24 this Action. In-House Counsel does not include Outside Counsel of Record
25 or any other outside counsel.

26 2.9 Non-Party: any natural person, partnership, corporation,
27 association, or other legal entity not named as a Party to this action.
28

1 2.10 Outside Counsel of Record: attorneys who are not employees of
 2 a party to this Action but are retained to represent or advise a party to this
 3 Action and have appeared in this Action on behalf of that party or are
 4 affiliated with a law firm which has appeared on behalf of that party, and
 5 includes support staff.

6 2.11 Party: any party to this Action, including all of its officers,
 7 directors, employees, consultants, retained experts, and Outside Counsel of
 8 Record (and their support staffs).

9 2.12 Producing Party: a Party or Non-Party that produces Discovery
 10 Material in this Action.

11 2.13 Professional Vendors: persons or entities that provide litigation
 12 support services (e.g., photocopying, videotaping, translating, preparing
 13 exhibits or demonstrations, and organizing, storing, or retrieving data in any
 14 form or medium) and their employees and subcontractors.

15 2.14 Protected Material: any Discovery Material that is designated as
 16 "CONFIDENTIAL."

17 2.15 Receiving Party: a Party that receives Discovery Material from a
 18 Producing Party.

19 2.16 Disclosure or To Disclose: the terms shall mean to divulge,
 20 reveal, describe, summarize, paraphrase, quote, transmit, or otherwise
 21 provide or communicate to any person or entity Protected Material, whether
 22 pursuant to request, interrogatory, process, or otherwise, and whether in
 23 accordance with the Federal Rules of Civil Procedure or otherwise.

24 **3. SCOPE**

25 The protections conferred by this Stipulation and Order cover not only
 26 Protected Material (as defined above), but also (1) any information copied or
 27 extracted from Protected Material; (2) all copies, excerpts, analyses,
 28 summaries, or compilations of Protected Material; and (3) any testimony,

1 conversations, or presentations by Parties or their Counsel that might reveal
2 Protected Material. Any use of Protected Material at trial shall be governed
3 by the orders of the trial judge. This Order does not govern the use of
4 Protected Material at trial.

5 **4. DURATION**

6 The Protective Order shall remain in effect for the duration of this
7 action either by settlement or final disposition, unless otherwise ordered by
8 the Court or agreed by the parties.

9 Final disposition shall be deemed to be the later of (1) dismissal of all
10 claims and defenses in this Action, with or without prejudice; and (2) final
11 judgment herein after the completion and exhaustion of all appeals,
12 rehearings, remands, trials, or reviews of this Action, including the time
13 limits for filing any motions or applications for extension of time pursuant to
14 applicable law.

15 **5. DESIGNATING PROTECTED MATERIAL**

16 5.1 Exercise of Restraint and Care in Designating Material for
17 Protection. Each Party or Non-Party that designates information or items for
18 protection under this Order must take care to limit any such designation to
19 specific material that qualifies under the appropriate standards. The
20 Designating Party must designate for protection only those parts of material,
21 documents, items, or oral or written communications that qualify so that
22 other portions of the material, documents, items, or communications for
23 which protection is not warranted are not swept unjustifiably within the
24 ambit of this Order.

25 Mass, indiscriminate, or routinized designations are prohibited.
26 Designations that are shown to be clearly unjustified or that have been made
27 for an improper purpose (e.g., to unnecessarily encumber the case
28 development process or to impose unnecessary expenses and burdens on

1 other parties) may expose the Designating Party to sanctions.

2 If it comes to a Designating Party's attention that information or items
3 that it designated for protection do not qualify for protection, that
4 Designating Party must promptly notify all other Parties that it is
5 withdrawing the inapplicable designation.

6 5.2 Manner and Timing of Designations. Except as otherwise
7 provided in this Order (see, e.g., second paragraph of section 5.3(a) below),
8 or as otherwise stipulated or ordered, Discovery Material that qualifies for
9 protection under this Order must be clearly so designated before the material
10 is disclosed or produced.

11 5.3 Designation in conformity with this Order requires:

12 (a) for information in documentary form (e.g., paper or electronic
13 documents, but excluding transcripts of depositions or other pretrial or trial
14 proceedings), that the Producing Party affix at a minimum, the legend
15 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page
16 that contains protected material. If only a portion or portions of the material
17 on a page qualifies for protection, the Producing Party also must clearly
18 identify the protected portion(s) (e.g., by making appropriate markings in the
19 margins).

20 A Party or Non-Party that makes original documents available for
21 inspection need not designate them for protection until after the inspecting
22 Party has indicated which documents it would like copied and produced.
23 During the inspection and before the designation, all of the material made
24 available for inspection shall be deemed "CONFIDENTIAL." After the
25 inspecting Party has identified the documents it wants copied and produced,
26 the Producing Party must determine which documents, or portions thereof,
27 qualify for protection under this Order. Then, before producing the specified
28 documents, the Producing Party must affix the "CONFIDENTIAL legend" to

1 each page that contains Protected Material. If only a portion or portions of
2 the material on a page qualifies for protection, the Producing Party also must
3 clearly identify the protected portion(s) (e.g., by making appropriate
4 markings in the margins).

5 (b) for testimony given in depositions that the Designating Party
6 identify the Discovery Material on the record, the parties' counsel shall have
7 the option, during the deposition or within fourteen (14) days after the
8 deposition, to require the reporter to prepare the transcript and exhibits as
9 "CONFIDENTIAL." Such transcripts, exhibits, and the information
10 contained therein shall remain protected for fourteen (14) days under this
11 Protective Order regardless of whether the parties' counsel exercises the
12 option provided by this subparagraph. Moreover, the parties may, at the
13 deposition or within fourteen (14) days after receiving a copy of the
14 deposition transcripts, designate deposition testimony or portions thereof as
15 "Confidential."

16 (c) for information produced in some form other than documentary
17 and for any other tangible items, that the Producing Party affix in a
18 prominent place on the exterior of the container or containers in which the
19 information is stored the legend "CONFIDENTIAL." If only a portion or
20 portions of the information warrants protection, the Producing Party, to the
21 extent practicable, shall identify the protected portion(s).

22 5.4 Inadvertent Failures to Designate. The inadvertent or
23 unintentional disclosure of any Protected Material shall not be construed to
24 be a waiver, in whole or part, of any party's claim of confidentiality, either as
25 to the specific Protected Material disclosed or as to other related information.
26 Upon becoming aware of an inadvertent or an unintentional failure to
27 designate, a party must promptly take steps to correct that failure.

28

1 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

2 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
3 designation of confidentiality at any time that is consistent with the Court's
4 Scheduling Order.

5 6.2 Meet and Confer. The Challenging Party shall initiate the
6 dispute resolution process under Local Rule 37.1 et seq.

7 6.3 The burden of persuasion in any such challenge proceeding shall
8 be on the Designating Party. Frivolous challenges, and those made for an
9 improper purpose (e.g., to harass or impose unnecessary expenses and
10 burdens on other parties) may expose the Challenging Party to sanctions.
11 Unless the Designating Party has waived or withdrawn the confidentiality
12 designation, all parties shall continue to afford the material in question the
13 level of protection to which it is entitled under the Producing Party's
14 designation until the Court rules on the challenge.

15 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

16 7.1 Basic Principles. A Receiving Party may use Protected Material
17 that is disclosed or produced by another Party or by a Non-Party in
18 connection with this Action only for prosecuting, defending, or attempting to
19 settle this Action. Such Protected Material may be disclosed only to the
20 categories of persons and under the conditions described in this Order. When
21 the Action has been terminated, a Receiving Party must comply with the
22 provisions of section 13 below (FINAL DISPOSITION).

23 Nothing in this Protective Order shall prevent a Producing Party from
24 any use of its own Protected Material. Moreover, nothing in this Protective
25 Order shall limit the right of the parties to use Protected Material for
26 purposes of this action, including in any pleadings, memoranda, briefs,
27 exhibits, or other documents that may be prepared in connection with this
28 action. In the event Protected Materials are included in any document filed

1 with the Court, such document shall be sought to be filed under seal, redacted
2 or as otherwise agreed to by the parties in writing, or as otherwise ordered by
3 the Court. If a party seeking to file a document containing Protected Material
4 cannot obtain the written agreement of the party producing the Confidential
5 Materials or cannot redact the Protected Materials and seeks to file the
6 document containing Protected Materials under seal, the party shall, in good
7 faith, follow the procedure in Civil Local Rule 79-5. If the Court denies the
8 party's motion to file under seal, the party shall be free to file such document.
9 Nothing in this shall preclude the Producing Party from seeking an order
10 from the Court regarding the filing of such document.

11 Neither party shall disclose any information designated as
12 "Confidential" by a Producing Party without the written consent of the
13 Producing Party or the express permission of the Court.

14 Protected Material must be stored and maintained by a Receiving Party
15 at a location and in a secure manner that ensures that access is limited to the
16 persons authorized under this Order.

17 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
18 otherwise ordered by the court or permitted in writing by the Designating
19 Party, a Receiving Party may disclose any information or item designated
20 "CONFIDENTIAL" only to:

21 (a) the Receiving Party's Outside Counsel of Record in this Action,
22 as well as employees of said Outside Counsel of Record to whom it is
23 reasonably necessary to disclose the information for this Action;

24 (b) the officers, directors, and employees (including In-House
25 Counsel) of the Receiving Party to whom disclosure is reasonably necessary
26 for this Action;

27 (c) Experts (as defined in this Order) of the Receiving Party to
28 whom disclosure is reasonably necessary for this Action and who have

1 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A). All
2 Acknowledgement and Agreement to Be Bound forms executed shall be
3 maintained by the party turning over the material.

4 (d) the court and its personnel;

5 (e) court reporters and their staff;

6 (f) professional jury or trial consultants, mock jurors, and
7 Professional Vendors to whom disclosure is reasonably necessary for this
8 Action and who have signed the “Acknowledgment and Agreement to Be
9 Bound” (Exhibit A). All Acknowledgement and Agreement to Be Bound
10 forms executed shall be maintained by the party turning over the material.

11 (g) the author or recipient of a document containing the information
12 or a custodian or other person who otherwise possessed or knew the
13 information;

14 (h) during their depositions, witnesses ,and attorneys for witnesses,
15 in the Action to whom disclosure is reasonably necessary provided: (1) the
16 deposing party requests that the witness sign the form attached as Exhibit A
17 hereto; and (2) they will not be permitted to keep any confidential
18 information unless they sign the “Acknowledgment and Agreement to Be
19 Bound” (Exhibit A), unless otherwise agreed by the Designating Party or
20 ordered by the court. All Acknowledgement and Agreement to Be Bound
21 forms executed shall be maintained by the party turning over the material.
22 Pages of transcribed deposition testimony or exhibits to depositions that
23 reveal Protected Material may be separately bound by the court reporter and
24 may not be disclosed to anyone except as permitted under this Stipulated
25 Protective Order; and

26 (i) any mediator or settlement officer, and their supporting
27 personnel, mutually agreed upon by any of the parties engaged in settlement
28 discussions.

**8. PROTECTED MATERIAL SUBPOENAED OR ORDERED
PRODUCED IN OTHER LITIGATION**

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive from another court.

**9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
PRODUCED IN THIS LITIGATION**

(a) The terms of this Order are applicable to information produced by a Non-Party in this Action and designated as "CONFIDENTIAL." Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these

1 provisions should be construed as prohibiting a Non-Party from seeking
2 additional protections.

3 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED**
4 **MATERIAL**

5 If a Receiving Party learns that, by inadvertence or otherwise, it has
6 disclosed Protected Material to any person or in any circumstance not
7 authorized under this Stipulated Protective Order, the Receiving Party must
8 immediately (a) notify in writing the Designating Party of the unauthorized
9 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
10 Protected Material, (c) inform the person or persons to whom unauthorized
11 disclosures were made of all the terms of this Order, and (d) request such
12 person or persons to execute the "Acknowledgment and Agreement to Be
13 Bound" that is attached hereto as Exhibit A.

14 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR**
15 **OTHERWISE PROTECTED MATERIAL**

16 When a Producing Party gives notice to Receiving Parties that certain
17 inadvertently produced material is subject to a claim of privilege or other
18 protection, the obligations of the Receiving Parties are those set forth in
19 Federal Rule of Civil Procedure 26(b)(5)(B). "This provision is not
20 intended to modify whatever procedure may be established in an e-
21 discovery order that provides for production without prior privilege
22 review."

23 **12. MISCELLANEOUS**

24 12.1 Modifications. Nothing in this Order abridges the right of any
25 person to seek its modification, extension, or limitation as may be hereinafter
26 agreed to by all parties, or by Order of the Court.

27 12.2 Right to Assert Other Objections. By stipulating to the entry of
28 this Protective Order no Party waives any right it otherwise would have to

1 object to disclosing or producing any information or item on any ground not
2 addressed in this Stipulated Protective Order. Similarly, no Party waives any
3 right to object on any ground to use in evidence of any of the material
4 covered by this Protective Order.

5 12.3 Filing Protected Material. A Party that seeks to file under seal
6 any Protected Material must comply with Civil Local Rule 79-5. Protected
7 Material may only be filed under seal pursuant to a court order authorizing
8 the sealing of the specific Protected Material at issue. If a Party's request to
9 file Protected Material under seal is denied by the court, then the Receiving
10 Party may file the information in the public record unless otherwise
11 instructed by the court.

12 12.4 Right to Further Relief. The Court retains the right to allow
13 disclosure of any subject covered by this Protective Order or to modify this
14 Protective Order at any time in the interest of justice.

15 **13. SETTLEMENT OR FINAL DISPOSITION**

16 After the settlement or final disposition of this Action, as defined in
17 paragraph 4, within 30 days of a written request by the Designating Party,
18 each Receiving Party must return all Protected Material to the Producing
19 Party or destroy such material. As used in this subdivision, "all Protected
20 Material" includes all copies, abstracts, compilations, summaries, and any
21 other format reproducing or capturing any of the Protected Material. Whether
22 the Protected Material is returned or destroyed, the Receiving Party must
23 submit a written certification to the Producing Party (and, if not the same
24 person or entity, to the Designating Party) by the 30 day deadline that (1)
25 identifies (by category, where appropriate) all the Protected Material that was
26 returned or destroyed and (2) affirms that the Receiving Party has not
27 retained any copies, abstracts, compilations, summaries or any other format
28 reproducing or capturing any of the Protected Material. Notwithstanding this

provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order even after the resolution of the case, by settlement or final disposition..

14. Any violation of this Order may be punished by any and all appropriate measures including, without limitation, contempt proceedings and/or monetary sanctions.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Pursuant to Local Rule 5-4.3.4(a)(2)(i), I certify that all other signatories listed, on whose behalf the filing is submitted, concur in the filing's content and have authorized the filing.

Dated: July 22, 2016

BERGER & MONTAGUE, P.C.

By: /s/Joseph C. Hashmall
Joseph C. Hashmall
Attorneys for Plaintiff Smith

Dated: July 22, 2016

SEYFARTH SHAW

By: /s/Monica Rodriguez
Pamela Q. Devata
Timothy L. Hix
Jonathan L. Brophy
Monica Rodriguez
Attorneys for Defendant A-Check

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

Dated: July 25, 2016



Hon. Kenly Kato
Magistrate Judge
United States District Court
Central District of California

EXHIBIT A**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of
 perjury that I have read in its entirety and understand the Stipulated
 Protective Order that was issued by the United States District Court for the
 Central District of California on [date] in the case of *Smith v. A-Check
 America, Inc.*, Case No. 5:16-cv-00174-VAP-KK. I agree to comply with and
 to be bound by all the terms of this Stipulated Protective Order and I
 understand and acknowledge that failure to so comply could expose me to
 sanctions and punishment in the nature of contempt. I solemnly promise that
 I will not disclose in any manner any information or item that is subject to
 this Stipulated Protective Order to any person or entity except in strict
 compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District
 Court for the Central District of California for the purpose of enforcing the
 terms of this Stipulated Protective Order, even if such enforcement
 proceedings occur after termination of this action. I hereby appoint
 _____ [print or type full name] of
 _____ [print or type full address
 and telephone number] as my California agent for service of process in
 connection with this action or any proceedings related to enforcement of this
 Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____